IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 677 of 2000

Shri Arun Raj,
14254057-H, Ex-Signalman
(Lance Nayak) of the 787 (Independent),
Air Defence Brigade Signal Company,
Dehu Road (Cantt.), Pune. ... Petitioner
(Now in Yerwada Central Prison, Pune, (Ori. Accused)
being Convict No.C-10532).

V/s

1. Union of India,
   Through Secretary,
   Ministry of Defence, New Delhi.

2. Chief of the Army Staff,
   Army Head Quarters,
   Kashmir House, New Delhi-110011.

3. The Superintendent,
   Yerwada Central Prison, Pune. ... Respondents

Mr. Prakash Shetty for the petitioner.

Mr. D.A. Nalawade for Respondent Nos. 1 & 2.

Mr. B.H. Mehta for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR,
& P.V. KAKADE, JJ.

DATED: 25TH AUGUST, 2005.

ORAL JUDGMENT (Per Kakade, J.):

1. This writ petition under Art. 226 of the Indian constitution is preferred by the petitioner against the

order dated 19.1.2000 passed by the respondent No.2 Chief of the Army Staff, rejecting the petitioner's representation and the order dated 10.10.1998 and 15.1.1999 passed by the Presiding Officer of General Court Martial in the case of the petitioner and orders dated 15.12.1998 and 6.3.1999 passed by the Lt. Colonel, Officer Commanding in the case of the petitioner and requested that the order passed against the petitioner be quashed and set aside. By the impugned order, the petitioner was found guilty for committing civil offence i.e. murder under Sec. 302 of the Indian Penal Code by the Presiding Officer of General Court Martial under the Indian Army Act and awarded the sentence to suffer imprisonment for life and also came to be dismissed from service by order dated 15.1.1999.

2. We have heard learned counsel for the petitioner as well as the respondents. Perused the record.

3. The facts giving rise to the petition, in a nutshell are thus -

The petitioner joined the Indian Army in the year 1983 and in the year 1998 he was working as Ex-Signalman

(Lance Nayak) of 787 (Independent) Air Defence Brigade Signal Company. On 22.3.1998, one Mr. S.S.B. Rao, PW-4 was the Section In-charge of Operator Section. At about 1.00 p.m. Mr. Rao returned from lunch and the petitioner reported him that Havildar R.C. Tiwari (deceased) and Havildar Inderpal (PW-3) abused him by using the word "Gandu". Mr. Rao made enquiry with deceased Tiwari and Inderpal but they replied in the negative. However, the petitioner persisted that he was so insulted by both of them including the deceased. The petitioner also informed Mr. Rao that in the earlier night there was heated discussion between the petitioner and the deceased and said Inderpal, and the matter was reported to the superior officer. But deceased and Inderpal denied the use of such words allegedly addressed to the petitioner. After having lunch, PW-1 Paulose returned to barrack from the rank mess and he spread bedding on the cot and was relaxing, at which time the accused was coming towards the door. PW-1 thought that the accused must be going for urinal or for collecting the clothes. The cot of Mr. Tiwari was near the door and at that time the accused was in half tea-shirt and loongi. He came closer to the cot of Tiwari, took out a knife and stabbed on the right side chest of Tiwari. At that time, Tiwari was sleeping. On

seeing the incident, PW-1 was stunned and kept wondering as to why the accused did so. Thereafter he shouted as to what the petitioner was doing. On hearing the shout, the persons nearby gathered. The accused was separated from the point and thereafter medical aid was called for and finally injured Tiwari was sent to the hospital where he finally succumbed to the injury. The F.I.R. was accordingly lodged at Dehu Road Police Station vide CR-26 of 1998 under Sec. 302 of the I.P.C. Investigation commenced, in which course the body was sent for post-mortem and inquest panchnama was also prepared. On completion of the investigation, the chargesheet was prepared against the petitioner and was forwarded to the Judicial Magistrate First Class, Vadgaon Maval.

4. The Court Martial was convened under the provisions of Indian Army Act. The charge was framed against the petitioner under Sec.69 of the Army Act for committing civil offence i.e. murder contrary to Sec. 302 of the I.P.C. for knowingly causing the death of Havildar Tiwari on 22.3.1998. The petitioner raised his objections to the said charge under Army Rule 49. The Court, overruling the objections of the petitioner, proceeded with the trial and rejected the objections.

The petitioner pleaded not guilty to the charge and the General Court Martial then proceeded to record the evidence of witnesses, in which course testimonies of as many as 18 witnesses came to be recorded including the eye witnesses and the medical evidence. The Court after going through due course of process under the relevant rules, awarded the sentence to the petitioner to suffer rigorous imprisonment for 7 years and he also came to be dismissed from service for committing the offence under Sec. 302 of the I.P.C., which was pronounced on 10th October, 1998. However, the Confirming Auithority by an order dated 15.12.1998 held that the sentence awarded by the General Court Martial after finding guilty fo the charge of murder under Army Act under Sec. 69 read with Sec.302 of the I.P.C. was not legal and the Court had no option but to order the sentence of the death or imprisonment for life and fine and accordingly the Confirming Authority held that punishment for R.I. was illegal for the impugned offence under the said charge.

5. The General Court Martial, thereafter, by order dated 15.1.1999 revised the sentence and awarded the sentence of life imprisonment and dismissal from service which was subsequently confirmed by the Confirming Authority and challenge to the said order by submitting

the petition to the Chief of Army Staff was also rejected by the Chief of the Army Staff, New Delhi. Hence the present petition.

6. The learned counsel for the petitioner raised only two issues in order to challenge the entire proceeding against the petitioner. Firstly, it was submitted that the charge framed against the petitioner was vague and, therefore, the entire process of General Court Martial was vitiated. Secondly, it was submitted that the facts and circumstances revealed from the record were, at the most sufficient to reveal the offence punishable under Sec. 304 Part II and not under Sec. 302 and, as such, it was alternatively pleaded that the sentence of life imprisonment was uncalled for and, therefore, intervention of this Court under Art. 226 of the Indian Constitution was necessary.

7. In this regard, let’s first peruse the charge as can be seen from the chargesheet on record. The document itself shows that, it is clearly mentioned as under:-

> **"Army Act: Section 69 -**
> Commsitting a civil offence, that is to say murder, contrary to Section 302 of the

Indian Penal Code."

In that he, at Dehu Road Contonment, on 22 March 1998, by knowingly causing the death of No.14228606A Havildar (Operator Keyboard and Line) Ram Chandra tiwari of his unit, committed murder."

The charging authority has signed below with place and date noted as per the requirement. In our considered view, therefore, there is absolutely no vague element in the said charge which sufficiently informs the petitioner as to what allegations he is facing and what defence he was required to press for the said overtact. Suffice to say, therefore, there is absolutely no vague element regarding the said charge.

8. So far as second submission on behalf of the petitioner is concerned, we must peruse the testimony of PW-1 read with testimony of PW-3. While PW-1 Paulose is an eye-witness to the incident, PW-3 is the witness to whom oral dying declaration was given by deceased Tiwari. In his testimony PW-1 has stated that, at the relevant time, the accused started coming towards door and he thought that the accused wanted to go either for urinal or for

collecting the clothes. The cot of deceased Tiwari was near the door. The accused who was in half tea-shirt and loongi, took knife and stabbed on the right side chest of deceased Tiwari. At that time Tiwari was sleeping. On seeing the incident of accused stabbing the deceased, witness was stunned and kept wondering as to why the accused did so. Thereafter he shouted as to what the petitioner was doing. Hearing his shouts, others came on the scene. On perusal of the entire testimony of PW-1 it is seen that, he has no enemocity against the petitioner at all and his testimony is cogent, reliable and trustworthy. Moreover, the testimony of PW-3 Havaldar Inderpal, who was also present in the said room, fortifies the overtact of the petitioner as justified by PW-1 Paulose. It has come in the evidence of PW-3 that when he went near deceased Tiwari enquiring as to what had happened, he was informed that the petitioner had stabbed him. It must be noted that testimony of Inderpal also is found to be reliable and trustworthy by all the concerned authorities below. Perusal thereof also is sufficient to inspire confidence in that regard and, therefore, we have no reason to doubt that the petitioner was author of the crime of stabbing the deceased at the said time and place with knife. We need not go into the details of the entire evidence except for the purpose of meeting the relevant arguments.

9. The learned counsel for the petitioner has submitted that there was only one stabbing injury and there was no intention apparent on the part of the petitioner as revealed from the evidence which would show that he intended to kill deceased Tiwari. It was further submitted that deceased Tiwari and witness Inderpal were teasing the petitioner as "Gandu" for which purpose there was altercation on the previous night. It was also submitted that this aspect gives rise to the sudden provocation for the petitioner to commit the crime but he did not intend to kill deceased Tiwari but only intended to punish him for teasing him in the said manner. In support of this version, the learned counsel for the petitioner sought to put reliance on the ruling of the Supreme Court in the case of **Jagtar Singh v/s State of Punjab, reported in 1983 SC 463,** the ratio of which appears to be to the effect that sudden quarrel on spur of moment arising out of trivial reason on chance meeting of parties and when there is no premeditation or malice found then the offence would fall under Sec. 304 Part II and not Parts I or II of Sec.300. We have critically perused the said Apex Court ruling vis-a-vis the facts revealed from the record and we have no hesitation to hold that the said ruling is not applicable to the present case. There is no question of involvement

in this case of sudden quarrel on spur of moment nor there is an element of absence of premeditation or malice. On the other hand, the evidence on record, as observed by both the Courts below shows that they have concluded that the use of the word "gandu" cannot be sufficient provocation for the petitioner to commit the crime. Moreover, it is not the case of the petitioner that, prior to the incident of stabbing, such words were uttered to give so-called provocation. In fact, the evidence is sufficient to show that the petitioner, after having lunch at room of one Mr. C.H.M. S.P.Singh, was in the normal state of mind. When he returned to the barrack from the rank mess, it was around 1.30 p.m. of the day and he committed the offence after about 45-50 minutes thereafter. During this period there was occasion for him to meditate on his action to committ offence. When he found Tiwari was sleeping, he stabbed in his chest with ferocious knife and medical evidence was on record to show that injuries caused were sufficient to cause death in normal course. On the basis of this aspect, both the Courts below recorded concurrent findings to the effect that it was an offence of murder contemplated under Sec. 302 of the I.P.C.

10. Besides this aspect, in our considered view, there is no other evidence to bring the case under Sec. 304 Part II

of the I.P.C. As submitted by the learned counsel for the petitioner, it is necessary to show that the act was done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as likely to cause death. In the present case before us, the premeditation on the part of the petitioner is quite evident on record. This is especially so when the attack was made not at the spur of moment but when deceased Tiwari was found fast sleep on his cot. It is also evident that the second blow could not be given because after the first blow Tiwari suddenly woke up and caught-hold of hand of the petitioner. Therefore, in this factual matrix, it cannot be said that the offence revealed from the facts of the case is under Sec. 304 Part II of the I.P.C. In other words, the offence revealed from the record clearly appears to be under Sec. 302 of the I.P.C. and the observations made by the concerned authorities while recording the reasons appear to be just, legal and proper.

11. In the result, we do not find any merit in the petition. We are satisfied that the concerned authorities have scrupulously adhered to the procedural as well as legal rules contemplated under the Army Act while conducting the trial and, therefore, the petition is devoid

of any merits. We are also satisfied that there is no infringement of principles of natural justice throughout the proceedings conducted by the concerned authorities.

12. In the result, the petition stands dismissed and Rule stands discharged.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)